

## **REMARKS**

The Office action dated December 1, 2004 is acknowledged. Claims 1-9 are pending in the instant application and have been rejected by the present Office action. By the present response, claims 10 – 19 have been added, support for which may be found throughout the specification and drawings. Furthermore, claim 12 combines the features and limitations set forth in claims 1 and 2, while claims 13 – 19 correspond to claims 3 – 9. Applicant respectfully submits that the feature that the components of the assembly can be stored in a fire pit central housing for portability, recited in new claim 11, is inherent from the drawings and specification. Reconsideration is respectfully requested in light of the following remarks.

### **Drawings**

The drawings are objected to as having poor line quality and formal drawings are requested. Formal replacement drawings were filed on March 12, 2004 with the paper titled “Response to Notice to File Corrected Application Papers.” The Examiner acknowledged with the applicant’s attorney via telephone that the replacement drawings have been received and entered into the file and stated that the objection was inadvertently included in the present Office action. Withdrawal of this rejection is therefore respectfully requested.

### **Rejection of Claims 1-7 under 35 U.S.C. 103(a)**

Claims 1-7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,832,915 (Skidmore, et al.) in view of U.S. Patent No. 5,909,729 (Nowicke, Jr.). Specifically, the Examiner states that Skidmore, et al. discloses an

invention similar to the present invention as claimed in claims 1-7, except for the use of a smoker attachment to use the device in a smoker mode. The Examiner refers to Nowicke, Jr. and states that the reference teaches a barbecue grill having an optional smoker attachment, thereby allowing the grill to be converted for use as a food smoker. The Examiner concludes that it would have been obvious to one skilled in the art to have modified the grill assembly of Skidmore, et al. to incorporate the smoker attachment of Nowicke, Jr. to arrive at the present invention according to claims 1-7.

The Applicant notes that it will discuss this rejection in light of claims 1-7, as well as being applied to new claims 10-17. New claims 18 and 19 are included with the discussion of claims 8 and 9 as claims 18 and 19 are based on claims 8 and 9, respectively.

The Applicant respectfully disagrees with the Examiner's conclusion and submits that each and every feature of the present invention as set forth in claims 1-7 of the present application, as well as new claims 10-17, is not taught or described in the combination of the cited references. Withdrawal of this rejection is requested for at least the following reasons. The present invention, as set forth in the instant claims, is directed to an assembly that is easily changeable between any one of a barbecue grill, a fire pit and a smoker. Moreover, the assembly of the present invention is compact, easily storable and easily transportable (paragraphs 000013, 000016 and 000018)

The applicant first wishes to point out that none of the references cited by and/or relied upon by the Examiner teaches an assembly comprising a combination of a barbecue, a fire pit and a smoker in a single, compact, easy to transport assembly, as

recited in claims 10 and 11, and having alternating modes as is set forth in each of the independent claims. Skidmore, et al. relates to a fireplace grill having dual purpose legs which are inverted to snap over a lid holding the entire unit together for compact storage and transport. The base of Skidmore, et al. also has angled sidewalls extending downwardly to a flat bottom, the angle between the sidewalls and the bottom being greater than 90° (see Fig. 3). Nowicke, Jr. relates to a barbecue grill assembly having a hemispherical base with a rounded bottom floor.

In addition, the Applicant respectfully submits that neither of the cited references teaches a heat source support that is movable between an upper position and a lower position in the base of the assembly, as recited in claim 2 and independent claim 12. Skidmore, et al. teaches a wood or charcoal supporting grate 35 (Fig. 2) that rests on the bottom of the firebox 21. Skidmore, et al. does not teach that the wood or charcoal supporting grate is movable between the lower position to the upper position. In fact, the wood or charcoal supporting grate could not be supported at the upper position in the firebox of Skidmore, et al. due to the sidewalls of the device described therein being angled upwardly, thereby causing the firebox to have a larger area at the top than at the bottom. In other words, the grate is too small to be supported at an upper position of the firebox. This same problem occurs in Nowicke, Jr. as the base has a curved bottom and the base has a smaller area at the bottom than at the top. The heat source in Nowicke, Jr. is provided at the bottom of the base and the reference does not teach a heat source support for supporting the heat source that is movable from a lower position of the base to an upper position of the base.

The Applicant further submits that neither of the aforementioned references teaches or discloses an impervious smoker central housing being removable from the base while the system is in a particular mode, as specifically set forth in amended claim 1 and new independent claims 10-12, and included as a limitation in the dependent claims. Skidmore, et al. only teaches a central housing that is foraminous and not impervious (i.e., for a fire pit). Nowicke, Jr., on the other hand, teaches a central housing 15 that is stationary in relation to the base 10.

The present invention relates to an assembly that can be easily interchanged between a grill, a fire pit and a smoker and has a base having vertical sidewalls and is able to accommodate both a smoke material generating pan and a heat source pan while in the smoker mode. Moreover, the smoke material generating pan and the heat source pan in the present invention are the same size and have the same surface area in order to maximize the amount of smoke and heat generated within the assembly, particularly while in the smoker mode. Applicant also submits that new claims 10 and 11 recite that the base of the assembly includes vertical sidewalls extending downwardly from the top edge, has a flat floor portion at the bottom of the base and that a curved portion connects the flat floor portion with the vertical sidewalls. A base having this structure is beneficial in that support pans for supporting smoke generating materials and a heat source and also a food support rack or grid may all have the same size, that being nearly the same diameter as the base itself, thereby maximizing the amount of food to be cooked/smoked in the assembly and the amount of smoke and heat that can be generated by the assembly. In turn, the assembly can be highly efficient while still being compact and easily

portable.

The Applicant submits that the combination of Skidmore, et al. and Nowicke, Jr. fails to teach a base having the structure of that of the present invention, that can accommodate both a smoke material-generating pan and a heat source pan having the same surface area, that a single assembly can have all three of a fire pit mode, a smoker mode and a barbecue mode and that the assembly can incorporate all three modes while still being easily transportable and compact. Additionally, the combination of these references fails to disclose a heat source support being selectively movable from a lower position in the base to an upper position in the base, depending on the particular mode in which the system is being employed or that the system includes an impervious central housing that is supported by the base and is selectively removable from the base while in the system is being employed in a particular mode.

Therefore, each and every limitation set forth in the presently claimed invention is not taught or described in the prior art references. Withdrawal of this rejection is respectfully requested.

**Rejection of Claim 8 under 35 U.S.C. 103(a)**

Claim 8 is rejected as being unpatentable over Skidmore, et al. in view of Nowicke, Jr. and further in view of U.S. Patent No. 3,915,145 (Tomita). The Examiner states that Tomita teaches the use of a base portion for the assembly having a door and that it would have been obvious to one skilled in the art to combine this teaching with the combination of Skidmore, et al. and Nowicke, Jr. to arrive at the present invention.

The applicant respectfully disagrees with this rejection for at least the above-noted

deficiencies of Skidmore, et al. and Nowicke, Jr. and the following reasons. Claim 8 depends from claim 1 and claim 18 depends from new independent claim 12, and Tomita fails to make up for any of the aforementioned deficiencies of Skidmore, et al. and Nowicke, Jr. Withdrawal of this rejection is respectfully requested.

**Rejection of Claim 9 under 35 U.S.C. 103(a)**

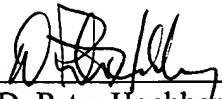
Claim 9 is rejected as being unpatentable over Skidmore, et al. in view of Nowicke, Jr. and further in view of U.S. Patent No. 5,960,788 (Bach, et al.). The Examiner states that Bach, et al. teaches the use of a foraminous screen assembly having a foraminous door which would have been obvious to include with the combination of Skidmore, et al. and Nowicke, Jr.

The applicant respectfully disagrees with this rejection for at least the above-noted deficiencies of Skidmore, et al. and Nowicke, Jr. and the following reasons. Claim 9 depends from claim 1 and claim 19 depends from new independent claim 12, and Bach, et al. fails to make up for any of the aforementioned deficiencies of Skidmore, et al. Withdrawal of this rejection is respectfully requested.

**Conclusion**

For the foregoing reasons, it is believed that the present application as amended is in condition for allowance, and such action is earnestly solicited. The Examiner is invited to call the undersigned if there are any remaining issues to be discussed which could expedite the prosecution of the present application.

Respectfully submitted,

By:   
D. Peter Hochberg  
Reg. No. 24,603

D. Peter Hochberg Co., L.P.A.  
1940 E. 6<sup>th</sup> St. – 6<sup>th</sup> Floor  
Cleveland, OH 44114-2294  
DPH/sm